SUPREME COURT, U. S.

AUG 21 1961

JAMES R. BROWNING, Clerk

No. 341

Supreme Court of the United States

October Term 1961

GEORGE HERMAN,

Petitioner,

v.

UNITED STATES OF AMERICA

Petition For a Writ of Certiorari To The United States Court of Appeals For The Fifth Circuit

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TO THE HONORABLE EARL C. WARREN, CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The Petitioner, GEORGE HERMAN, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on April 12, 1961.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit is reported at 289 F. 2d 362.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on April 12, 1961, and a copy thereof is appended to this petition in Appendix A at p. 16.

On June 21, 1961, the Court of Appeals for the Fifth Circuit denied a petition for rehearing. Appendix B, p. 17.

On July 7, 1961, the Honorable John Minor Wisdom, United States Circuit Judge entered an order staying the Court of Appeals' mandate for a period of thirty days from June 21, 1961. Appendix C at p. 19.

On July 12, 1961, Mr. Justice Black granted an extension of time for the filing of a writ of certiorari until August 20, 1961, a copy of said order being appended to this Petition in Appendix D at p. 22.

On July 17, 1961, the Honorable John Minor Wisdom, United States Circuit Judge, entered an order further staying the issuance of the mandate in accordance with the extended time allowed in the order entered by Mr. Justice Black, a copy of said latter order being appended to this Petition in Appendix E at p. 20.

The petition was filed timely. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rule 37(b)(2), Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

In all matters, both criminal and civil, maintained in federal courts, the burden is upon the plaintiff and prosecution respectively to discharge as a matter of law the application of the Federal Court's jurisdiction.

The burden of the District Court is basically to make a determination of whether or not its jurisdiction is applicable. This determination, once the evidence is in, becomes a question of law and the trial court is not to be burdened with the task of proving for the prosecution in criminal matters that the Federal criminal jurisdiction is applicable.

The District Courts being courts of limited jurisdiction, thus the parties that seek to invoke their jurisdiction must prove the application thereof.

A District Court which seeks to extend its jurisdiction by aiding and assisting the prosecution in discharging the burden of proof so that its criminal jurisdiction will be applicable falls into the frame of mind of the prosecutor and therefore denies to the defendant a fair and impartial trial. Such procedure on the part of a District Court manifests itself by the overparticipation in the cause by the presiding jurist to the prejudice of the defendant.

The trial court cannot under the guise of seeking the facts to establish its jurisdiction be allowed to encroach upon the discharge of the burden of proof which is the prosecution's. These procedures create a degree of participation which knows no bounds and limits and further bind the District Judge and prosecution as one force which stands as a block to the fairness and impartiality of the trial court.

This Court has never ruled upon the definition of "market value" of goods, wares and merchandise of a value of $5,000.00 transported in interstate commerce